

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,

Plaintiff,

vs.

LEROY ROOSEVELT MACK,

Defendant.

Case No. 2:00-CR-00076-PMP

ORDER

On March 26, 2014, this Court entered Judgment on Revocation of Supervised Release as to Defendant Leroy Mack (Doc. #379). On April 17, 2014, Defendant Mack filed a Notice of Appeal (Doc. #394). On April 21, 2014, Appellate Commissioner, Peter Shaw, entered the attached order which apparently has not been docketed in the instant case pending in United States District Court. Commissioner Shaw's order is simple enough. It notes that Defendant Mack failed to file his Notice of Appeal within fourteen (14) days after entry of judgment. However, because Mack did file his Notice of Appeal within thirty (30) days after the expiration of the time to properly do so, the Appellate Commissioner has determined it appropriate to remand the matter to this Court for the limited purpose of remitting the District Court to provide Appellant Mack with notice and an opportunity to request that the time for filing the Notice of Appeal be extended for a period not to exceed thirty (30) days. This will entail a finding by this Court that Defendant Mack's failure to timely file his Notice of Appeal was the result of

1 excusable neglect or good cause. Fed. R. App. P. 4(b)(4).

2 **IT IS THEREFORE ORDERED** that Clerk of Court shall forthwith file
3 in the docket of this case a copy of Commissioner Shaw's Order attached hereto
4 dated April 21, 2014.

5 **IT IS FURTHER ORDERED** that Defendant/Appellant Mack shall have
6 to and including **May 15, 2014** within which to file a written request that the time
7 for filing the Notice of Appeal be extended as provided above, and to explain why
8 he failed to do so in the first instance.

9 DATED: April 24, 2014.

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11 PHILIP M. PRO
12 United States District Judge
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FILED

UNITED STATES COURT OF APPEALS

APR 21 2014

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LEROY ROOSEVELT MACK,

Defendant - Appellant.

No. 14-10192

D.C. No. 2:00-cr-00076-PMP

District of Nevada,

Las Vegas

ORDER

Before: Peter L. Shaw, Appellate Commissioner.

On April 17, 2014, appellant filed a notice of appeal from the district court's judgment entered on March 26, 2014. Because the notice of appeal was filed more than 14 days after entry of judgment, it was not timely under Federal Rule of Appellate Procedure 4(b)(1)(A). The notice of appeal was, however, filed within 30 days after the expiration of the time to file the notice of appeal. *See* Fed. R. App. P. 4(b)(4). Accordingly, pursuant to circuit court policy, this case is remanded to the district court for the limited purpose of permitting the district court to provide appellant notice and an opportunity to request that the time for filing the notice of appeal be extended, for a period not to exceed 30 days from the expiration of the time prescribed by Rule 4(b), upon a finding of excusable neglect

or good cause. *See* Fed. R. App. P. 4(b)(4); *United States v. Ono*, 72 F.3d 101, 103 (9th Cir. 1995) (order); *United States v. Stolarz*, 547 F.2d 108 (9th Cir. 1976).

The district court is requested to make this determination at its earliest convenience and to send to this court a copy of its order setting forth the basis for its determination. The district court is also requested to serve its order on appellant's counsel Assistant Federal Public Defender Alina M. Shell.

The proceedings in this court are held in abeyance pending the district court's determination.

The Clerk shall serve this order on the district judge.